IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 545 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAHIRAJ BHANUBHAI DWIVEDI

Versus

STATE OF GUJARAT

Appearance:

Mr N D Nanavaty, Sr.Counsel for Petitioner

MR SV RAJU Special Prosecutor for Respondent No. 1

Mr K P Raval, APP for respondent no.2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/01/2001

C A V JUDGEMENT

This petition has been filed under Article 226 of the Constitution of India read with Articles 14 and 16 thereof by the original accused for appropriate writ,

order or direction for quashing and setting aside the order passed by the State Government on 14.6.1999, according sanction to prosecute the petitioner for offences punishable under the provisions of Prevention of Corruption Act, 1947. The facts leading to this petition may be briefly stated as follows:

2. According to the case of the petitioner, he is a Class I Officer and was working as Deputy District Development Officer, District Panchayat, Amreli. The petitioner has further stated that a raid was arranged by the Anti Corruption Bureau on the basis of a complaint and effort was made to trap the petitioner for getting illegal gratification from the complainant. That on the aforesaid ground the petitioner was suspended by order dated 12.8.1996 but the order of suspension was revoked by the State Government by order dated 1.1.1997. The petitioner has further contended that the Anti Corruption Bureau (for short 'the ACB') has submitted a report to the Government to accord sanction to prosecute the petitioner, but no such sanction was accorded and in fact, it was refused by the State Government at the relevant point of time. That the petitioner was accordingly informed about the said decision of the State Government. That the Vigilance Commission and the ACB have treated the said chapter and file as closed since the sanction was refused. The petitioner has, thereafter, contended that because of some political vendetta, the petitioner was posted as Officer on Special Duty in the office of the then Chief Minister and that he was out to finish even the career of the petitioner for the reasons best known to the political personalities. Under the circumstances, since the petitioner was not considered for promotion to the higher post and his juniors were promoted to higher posts, the petitioner approached this High Court by filing Special Civil Application no.3779/99, wherein interim relief restraining the respondent from giving promotion to persons junior to the petitioner, was granted by this court. The petitioner also contends that feeling aggrieved by the order of suspension, he had already preferred Special Civil Application no.4044/99 before this court, which was pending at the stage of admission at the time when the present petition was filed. That with a view to overcome the contentions made by the petitioner in the previous litigation, the State Government has accorded sanction to prosecute the petitioner wide order dated 14.6.1999, a copy thereof is placed at Annexure 'G', The petitioner has contended that once the proposal to prosecute the petitioner submitted by the competent authority namely; the ACB is refused and

declined by the State Government, (the said refusal order is produced before the competent court), it is no longer open for the State Government to review the said decision, that too without giving an opportunity to the petitioner. That the State Government has not considered, while passing the order according sanction dated 14.6.1999, the earlier decision taken by the State Government for not according sanction to prosecute the petitioner. That therefore, the sanction has been accorded without application of mind. It is further contended that the order of sanction is a matter of victimization of the petitioner. That the order has also been passed with malafide exercise of powers and it is based on irrelevant and extraneous consideration. That there is a long delay in taking the second decision of according sanction to prosecute the petitioner, which is fatal to the case of the respondent. The petitioner claims that therefore, the order of respondent according sanction to prosecute the petitioner dated 14.6.1999 is illegal. Therefore, the petitioner has prayed for appropriate writ, order or direction for quashing and setting aside the order according sanction to prosecute the petitioner.

3. On receipt of the petition, rule was issued at the first instance. Learned Special Counsel for the State, Mr S V Raju has appeared in response to the service of rule. I have heard the learned Advocates for the respective parties and have perused the papers. The facts are not very much in dispute. The petitioner has been facing charge for offence punishable under the Prevention of Corruption Act. A copy of the FIR has been placed at Annexure 'A' at page 11 to the petition. The FIR appears to have been filed by one Ashwinikumar Sheth of Ahmedabad on 21.3.1996 against the petitioner and two other persons for demanding amount of bribe of Rs.51,000/- and for accepting an amount of Rs.15,000/in three instalments and also for accepting the remaining amount of Rs.30,000/- on 22.3.1996. It appears that an application was submitted for conversion of agricultural land for Non Agricultural purpose and for passing an order in the aforesaid matter, the aforesaid amount of bribe was allegedly demanded and partly paid.

4. So far as the sanction to prosecute is concerned, it can be gathered from page 29 to the petition that the State Government appears to have passed an order for according sanction to prosecute the petitioner in exercise of powers under sections 19(1)(b) of the Prevention of Corruption Act. The order appears to have passed on 14.6.1999.

5. Firstly, the order has been passed by the Government and therefore, the highest authority has passed the order. It, therefore, cannot be said to be an order without authority or jurisdiction. It has been argued on behalf of the petitioner that there is no mention about the earlier order refusing to accord sanction in the said order at page 29. Simply because the order does not indicate that there was a previous order refusing to accord sanction, then in that event, the order at page 29 according sanction to prosecute, cannot be said to be illegal. After all it is a question of fact as to whether or not the previous refusal was placed to the notice of the Government or whether the Government was aware of the said position while passing order at page 29. This is a matter of fact, which can be entertained and appropriately decided at trial when the evidence is produced in support of the order passed at page 29. It is the usual practice in the Special courts to submit necessary papers before the court in order to enable the special court to take a decision as to whether or not sanction has been legally, appropriately and validly accorded. Therefore, this question of fact can be gone into on looking into the materials placed before the court concerned at the relevant point of time, when the petitioner will certainly be at liberty to dispute this question of fact at appropriate stage before appropriate court. This Court, exercising extra ordinary powers, duties and functions cannot enter into the disputed question of fact and cannot decide such disputed question of fact.

6. Another argument advanced on behalf of the petitioner is that there is no mention in the said order at page 29 as to why the Government was required to take a second decision when the initial decision was in favor of the petitioner. On this aspect of the case, it appears that the Government had appointed a Committee on 4.4.1998 under a circular which is placed at page 38, for a review of the order passed by the previous Government in power. It may be that this Committee may have gone into several questions and decisions of the previous Government. It may be that the present order may have been passed by the Government reviewing the earlier order on the strength of recommendation of the aforesaid Committee appointed under circular dated 4.4.1988 at page 38. Any way, this will again be a question of fact in order to ascertain as to what was the additional material or what was the ground for passing the order dated 14.6.1999 according sanction to prosecute the petitioner. Again this will be a disputed question of fact which

cannot be entertained by this court in this writ petition. In my opinion, simply because the said fact is absent in the order itself, it cannot be said that there was no reason for the State Government for passing the order dated 14.6.1999.

7. The respondents have filed affidavit of Mr R G Joshi working as Dy.Secretary, Government of Gujarat at page 87 and there the said officer has stated in his affidavit that the decision not to prosecute the petitioner taken by the then Chief Minister was influenced by extraneous consideration and, therefore, the matter was appropriately examined by the Cabinet Sub-Committee. It appears that the Cabinet Sub-Committee was appointed with a view to find out the illegality in the previous decisions of the previous Government. It appears that the said Cabinet Sub-Committee has undertaken to examine so many cases and the cases of the petitioner was also examined by the said committee and on examination of the materials made available to the said Sub-Committee, it found that the case was required to be reviewed and, therefore, it was reviewed accordingly whether there were materials and additional materials before the said Committee would also be a question of fact which cannot be entertained in this petition. It is more so, when the fact shows that it is denied that the previous Chief Minister had applied his mind while refusing to accord sanction to prosecute the petitioner.

8. It is, then contended that when the refusal to accord sanction to prosecute has gone to the hands of the court, then the order cannot be reviewed. It is true that by and large, there is decision to show that the order can be reviewed at least till the decision does not go to the hands of the Court but at the same time, it cannot be said that since the order has gone to the hands of the court, it cannot be reviewed. To send copy of the orders granting or refusing to grant sanction to prosecute, is an administrative process which has no link with the decision making process. Therefore, simply, because a copy of the order has been sent to the Special Court dealing with the aforesaid matter, it cannot, thereafter, be said that the order cannot be reviewed.

9. So far as the merits of the case area concerned, I am afraid, this court cannot go into the merits of the case. The sanction has been accorded on appreciation of the FIR and other materials on record. The FIR clearly shows the involvement of the petitioner in the aforesaid offence prima facie. There are subsequent panchnama and statements of witnesses along with the charge sheet

submitted by the Police Investigating Officer before the Court concerned. Therefore, it cannot be said that there was no material at all with the sanctioning authority and the authority has passed order according sanction to prosecute the petitioner without any material or without application of mind. It is more so, when the decision has been taken on the recommendation of the Cabinet Sub Committee, which is said to have examined all the cases and this was not an isolated case set apart for penalising the petitioner by prosecuting him. The petitioner has, therefore, not been not singled out in the above matter.

10. In Mansukhlal Vithhaldas Chauhan v. State of Gujarat (AIR 1997 SC 3400), it has been observed that an order passed by the sanctioning authority mechanically in obedience to the mandamus issued by the High Court by putting the signature on a proforma drawn up by the office would not be legal. There the High Court directed the sanctioning authority to sanction prosecution. If the authority declined to pass the order, then it may amount to contempt of court. Therefore, even under the pretext to avoid contempt proceedings, the authority might have passed the order sanctioning prosecution without application of mind. This is not a case in which there was some direction from some authority to the sanctioning authority to sanction prosecution. Another aspect of the case is that it was a case of bribery, which is said to have been taken before about 14 years since the incident. Therefore, fresh prosecution was not found to be just and proper and it was not permitted. This is not a case covering similar set of facts.

11.1. In Vijai Bahadur v State of U.P. (1989(1) SLR 93), sanction to prosecute was declined by holding that no prima facie case was made out and no fresh material was brought to the notice of the appointing authority and, therefore, review was found not permissible. In the present case, as said above, it is still to be decided as to whether the review was made on any additional material or whether it was made on the same material. Therefore, again this is a question of fact and it can be disposed of and decided appropriately as and when the entire material is placed before the special court dealing with the said subject.

12.2. Almost similar view was taken in the case of Jagdish Prasad Sharma v. State (1996 Cr.L.J. 4425). In the case of Jaswant Singh v. State of Punjab (AIR 1958 SC 124), it has been observed that the object of the provisions for sanction is that the authority giving the

sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. It is further observed as follows:

> "It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore, unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case."

13. Again, the matter relates to the question of fact as to whether there was material or additional material placed before the sanctioning authority while according sanction bypassing the previous order refusing to accord sanction. This factual aspect can be appropriately dealt with by the court concerned as and when the material is placed before it and the matter is argued out before it.

13.1. At the same time, in the case of State of Assam v. J N Roy Biswas (1976) 2 SLR 128, it has been observed that once a disciplinary case has been closed and the official is reinstated, the Government cannot restart the exercise, in absence of special power to review or revise, vested by rules in the said authorities. This is after all a matter relating to the service jurisprudence on the civil side. The above matter relates to the civil disputes between the State and its officer which is not a case before us. At the same time, the Hon'ble Supreme Court has observed in the last para of as follows:

> "We may however make it clear that no government servant can urge that if for some technical or other good ground, procedural, or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be, but once a disciplinary case has closed and the official reinstated, presumably on full exoneration, a chagrined Government cannot restart the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of the rule of law cannot be breached without legal provisions or other vitiating factor invalidating the earlier enquiry. For the present, this is theoretical because no such deadly defect is apparent on the record."

This shows that the doors have not been totally closed but even for reopening of a case, some formality has been shown. Therefore, even this case does not totally help the case of the petitioner. Some other decisions related to the principles enunciated on appreciation of evidence after full trial and even benefit of doubt is granted to the accused persons after full trial. The stage of taking a decision according sanction to prosecute is not a stage at which the question of extending benefit of reasonable doubt would arise and, therefore, decisions to that effect will not and cannot help the petitioner to any extent.

13.2. The case of M Selvarajan v. State (1996(1) Crimes 590) is one of the said instances which suspicious circumstances were taken into consideration and, therefore, conviction could not be sustained.

Even the case of Mahendra Singh v. State of Maharashtra (AIR 1998 SC 601) relates to disposal of case after full trial. In the case of Sagar Suri v. State of U.P. (JT 2000(1) SC 360), it is observed that simply because an application is submitted for discharging the accused person, it does not stand as a bar to exercise jurisdiction under Section 482 of the Criminal Procedure Code. This petition is being entertained on merit and, therefore, the principle laid down in this decision is not required to be discussed at length.

13.3. In the case of Gulam Mahmood v. State of Gujarat (AIR 1980 SC 1558) is also a case decided upon appreciation of evidence produced at the trial and full-fledged trial had been undertaken before disposal of the case. Similarly, decisions in the case of Shantilal v. State of Rajasthan (AIR 1976 SC 739), in the case of Dalhip Singh v. State of Punjab (1988(2) Crimes 554), are also decisions based on appreciation of evidence. This is not a stage at which evidence is required to be appreciated by this Court. Therefore, the said decision will not apply to the facts of the case before this Court.

13.4. In the case of State of Maharashtra v. Ishwar Kalpatri (1996(1) SCC 542, it has been observed that the High Court was not justified in judging the probability, reliability of genuineness of the allegations made in the complaint. It is further observed that if on the basis of allegations made in the complaint, a prima facie case is made out, then the High Court has no jurisdiction to quash the proceedings. It has further been observed that

the officer signing the sanction order is not required to state that he had personally scrutinised the file and arrived at the required satisfaction. It is further observed that the sanctioning authority is not required to afford opportunity of hearing to the delinquent before according sanction.

13.5. In Durgaprasad v. State Bank of Saurashtra (1997(1) GLR 462, the learned Single of this court had an occasion to consider the case of sanction accorded under section 19 of the Act. There also it has been observed that at the time of according sanction, what is to be taken into account is whether there exists prima facie case or not but not whether a conviction will take place or not. It is further observed that an order once refusing sanction can be reviewed and sanction to prosecute be accorded. While so doing, reliance was placed on certain decisions of the Apex Court and thereafter, it was held that the sanctioning authority had power to review the earlier order refusing to accord sanction. It is further observed that obviously such an action of according sanction is an administrative decision and it can be reviewed by the same authority by a subsequent decision.

13.6. In State of Bihar v. P P Sharma (1992(Supple)(1) SCC 222 also it has been laid down that the High Court has very limited power to quash criminal proceedings under Section 482 of Cr.P.C. It would be seen that this is not the proceedings for quashing the criminal proceedings under Section 482 of the Cr.P.C. At the same time, once the sanction accorded is quashed, the entire proceedings will stand collapsed because the sanction is the foundation for the criminal prosecution. The criminal prosecution under the Prevention of Corruption Act cannot go ahead in absence of a legal and valid sanction to prosecute the accused person. Even the question relating to malafide and bias has also been discussed and considered in this decision.

14. The petitioner has alleged that he has been victimized. No further particulars are available to decide the issue. In fact, it has been submitted by the learned Special Counsel for the respondent that many decisions of the previous Government were taken in review and the present one is one of them. As said earlier, the petitioner has not been singled out. No further particulars are made available for arguing the case of victimization. No specific allegation has been made against any officer or a group of officers at whose instance the petitioner could be said to be victimized.

It is not made clear as to the stage at which the petitioner was allegedly victimized - whether it was at the stage of complaint, at the stage of trap, at the stage of panchnama or only at the stage of sanction? In absence of any such materials, the case of victimization cannot be said to have been prima facie, made out.

15. Any way, the fact remains that the authority concerned has reviewed its earlier order on the basis of recommendations of the Cabinet Sub-Committee. All the relevant materials will naturally be placed before the trial court when the trial proceeds ahead after framing of charge. At that time, it would be open to the prosecution to lead appropriate evidence before the trial court in order to show various aspects of the case including application of mind, reasons for according sanction when it was previously refused, reasons for reviewing previous orders and/or such other issues which may be raised during the course of the trial. On appreciation of materials before the concerned court, the said court will naturally be in a position to decide these issues on facts. I am of the view that so far as this petition is concerned, it cannot be said that the sanction accorded and which is the subject matter of this petition is illegal on the face of it. As said above, it also requires appreciation of factual aspects. That can be done only on the appreciation of evidence and it can take place only if it is produced before the trial court and when the trial proceeds. Therefore, this is not the stage at which this court in exercise of inherent power, can quash the sanction accorded by the competent authority. Even the question as to whether or not there is enough material for according sanction, can also appropriately be considered at appropriate level. This is not the place where such issues can be gone into particularly when this issue also involve disputed questions of fact. In substance, I am of the view that the order according sanction cannot be treated to be illegal on the face of it. As said above, it requires appreciation of materials and disputed question of fact which cannot be gone into this petition. It is made clear that it would be open to the parties to lead appropriate evidence before the trial court and get decision from the said court as regards legality and validity of the sanction.

16. With these observations, there is nothing further to be done. Therefore, this petition is required to be dismissed and is accordingly dismissed. Rule discharged.

Interim relief granted earlier stands vacated.

Date:12.1.2001 [D P Buch, J.]
msp.

FURTHER ORDER

Heard the learned Advocate for the petitioner. Interim relief granted shall continue till four weeks from today. D.S. pernmitted.

[D P Buch, J.]